

§ 536.72 Finality of settlement.

A claimant's acceptance of an award, except for an advance payment or a split payment for property damage only, constitutes a release of the United States and its employees from all liability. Where applicable, a release should include the ARNG or the sending State. For further discussion see DA Pam 27-162, paragraph 2-82.

Subpart C—Claims Cognizable Under the Military Claims Act**§ 536.73 Statutory authority for the Military Claims Act.**

The statutory authority for this subpart is contained in the Act of August 10, 1956 (70A Stat. 153, 10 U.S.C. 2733), commonly referred to as the Military Claims Act (MCA), as amended by 90-521, September 1968 (82 Stat. 874); Public Law 90-522, September 1968 (82 Stat. 875); Public Law 90-525, September 1968 (82 Stat. 877); Public Law 93-336, July 8, 1974 (88 Stat. 291); Public Law 98-564, October 1984, (98 Stat. 2918); and Public Law 103-337, October 1994 (108 Stat. 2664).

§ 536.74 Scope for claims under the Military Claims Act.

(a) The guidance set forth in this subpart applies worldwide and prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death or personal injury, or damage to, or loss or destruction of, property:

(1) Caused by military personnel or civilian employees (enumerated in § 536.23(b)) acting within the scope of their employment, except for non-federalized Army National Guard soldiers as explained in subpart F of this part; or

(2) Incident to the noncombat activities of the armed services (see AR 27-20, Glossary).

(b) A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under this subpart if the Federal Tort Claims Act (FTCA) does not apply to the type of claim under consideration or if the claim arose incident to noncombat activities. For example, a claim by a

service member for property loss or damage incident to service may be settled if the loss arises from a tort and is not payable under AR 27-20, Chapter 11.

(c) A tort claim arising outside the United States may be settled under this subpart only if the claimant has been determined to be an inhabitant (normally a resident) of the United States at the time of the incident giving rise to the claim. See § 536.136(b).

§ 536.75 Claims payable under the Military Claims Act.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to, or loss or destruction of, property is payable under this subpart when:

(1) Caused by an act or omission of military personnel or civilian employees of the DA or DOD, acting within the scope of their employment, that is determined to be negligent or wrongful; or

(2) Incident to the noncombat activities of the armed services.

(b) *Property.* Property that may be the subject of claims for loss or damage under this subpart includes:

(1) Real property used and occupied under lease (express, implied, or otherwise). See § 536.34(m) and paragraph 2-15m of DA Pam 27-162.

(2) Personal property bailed to the government under an agreement (express or implied), unless the owner has expressly assumed the risk of damage or loss.

(3) Registered or insured mail in the DA's possession, even though the loss was caused by a criminal act.

(4) Property of a member of the armed forces that is damaged or lost incident to service, if such a claim is not payable as a personnel claim under AR 27-20, chapter 11.

(c) *Maritime claims.* Claims that arise on the high seas or within the territorial waters of a foreign country are payable unless settled under subpart H of this part.

§ 536.76 Claims not payable under the Military Claims Act.

(a) Those resulting wholly from the claimant's or agent's negligent or wrongful act. (See § 536.77(a)(1)(i) on contributory negligence.)

(b) Claims arising from private or domestic obligations rather than from government transactions.

(c) Claims based solely on compassionate grounds.

(d) A claim for any item, the acquisition, possession, or transportation of which was in violation of DA directives, such as illegal war trophies.

(e) Claims for rent, damage, or other payments involving the acquisition, use, possession or disposition of real property or interests therein by and for the Department of the Army (DA) or Department of Defense (DOD). See § 536.34(m) and paragraph 2-15m of DA Pam 27-162.

(f) Claims not in the best interests of the United States, contrary to public policy, or otherwise contrary to the basic intent of the governing statute (10 U.S.C. 2733); for example, claims for property damage or loss or personal injury or death of inhabitants of unfriendly foreign countries or individuals considered to be unfriendly to the United States. When a claim is considered not payable for the reasons stated in this section, it will be forwarded for appropriate action to the Commander USARCS, with the recommendations of the responsible claims office.

(g) Claims presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is, and at the time of the incident was, friendly to the United States. A prisoner of war or an interned enemy alien is not excluded from bringing an otherwise payable claim for damage, loss, or destruction of personal property in the custody of the government.

(h) A claim for damages or injury, which a receiving State should adjudicate and pay under an international agreement, unless a consistent and widespread alternative process of adjudicating and paying such claims has been established within the receiving State. See DA Pam 27-162, paragraph 3-4a, for further discussion of the conditions of waiver.

(i) Claims listed in §§ 536.42, 536.43, 536.44, 536.45, and 536.46 of this part, except for the exclusion listed in

§ 536.45(k). Additionally, the exclusions in § 536.45(a), (b), (e) and (k) do not apply to a claim arising incident to noncombat activities.

(j) Claims based on strict or absolute liability and similar theories.

(k) Claims payable under subparts D or J of this part, or under AR 27-20, chapter 11.

(l) Claims involving DA vehicles covered by insurance in accordance with requirements of a foreign country unless coverage is exceeded or the insurer is bankrupt. When an award is otherwise payable and an insurance settlement is not reasonably available, a field claims office should request permission from the Commander USARCS to pay the award, provided that an assignment of benefits is obtained.

§ 536.77 Applicable law for claims under the Military Claims Act.

(a) *General principles*—(1) *Tort claims excluding claims arising out of noncombat activities.* (i) In determining liability, such claims will be evaluated under general principles of law applicable to a private individual in the majority of American jurisdictions, except where the doctrine of contributory negligence applies. The MCA requires that contributory negligence be interpreted and applied according to the law of the place of the occurrence, including foreign (local) law for claims arising in foreign countries (see 10 U.S.C. 2733(b)(4)).

(ii) Claims are cognizable when based on those acts or omissions recognized as tortious by a majority of jurisdictions that require proof of duty, negligence, and proximate cause resulting in compensable injury or loss subject to the exclusions set forth at § 536.76. Strict or absolute liability and similar theories are not grounds for liability under this subpart.

(2) *Tort claims arising out of noncombat activities.* Claims arising out of noncombat activities under §§ 536.75(a)(2) and (b) are not tort claims and require only proof of causation. However, the doctrine of contributory negligence will apply, to the extent set forth in 10 U.S.C. 2733(b)(4) and paragraph (a)(1)(i) of this section.

(3) *Principles applicable to all subpart C claims.* (i) Interpretation of meanings